COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the tariff filings by Verizon – New England, Inc., d/b/a Verizon – Massachusetts	DTE 98-57, Phase III

AT&T'S INITIAL COMMENTS REGARDING WHY THE DEPARTMENT'S REVIEW OF VERIZON'S PARTS OFFERING, INCLUDING ITS IMPLICATIONS FOR THE DEVELOPMENT OF ELECTRONIC LOOP PROVISIONING, HAS NOT BEEN PREEMPTED AND SHOULD CONTINUE

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Introduction

On October 18, 2002 the Department ordered the opening of formal evidentiary proceedings in this docket to examine CLECs access to and Verizon's configuration of its recently announced rollout of Next Generation Digital Loop Carrier ("NGDLC") technology. The Department concluded that an examination of Verizon's rollout of this technology through its PARTS offering was necessary to ensure that it did not obtain a "first mover" advantage over CLECs attempting to compete with Verizon's retail offerings over its PARTS architecture. The Department also ordered that the formal proceeding would include an examination of Electronic Loop Provisioning ("ELP") over Verizon's PARTS technology. *See* Docket D.T.E. 98-57-III, Hearing Officer Ruling on Resuming the Procedural Schedule, dated October 18, 2002. Those further proceedings were then held in abeyance as the Department awaited issuance of the *Triennial Review Order* by the Federal Communications Commission (the "FCC"). After all, there would have been no need for the Department to take further action if the FCC, acting under federal authority, had ordered ILECs to provide appropriate access to packetized loops and to facilitate ELP. Since the FCC failed to do so as a matter of federal policy, the Department is faced squarely with the question of whether the welfare of Massachusetts consumers would be improved if the Department were to require Verizon to do so as a matter of Massachusetts telecommunications policy under state law authority.

AT&T respectfully urges the Department now to continue with its investigation of Verizon's PARTS offering.[1] The *Triennial Review Order* does not circumscribe the Department's authority to impose additional unbundling or interconnection obligations upon

[1] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98; and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2002) ("*Triennial Review Order*").

Verizon beyond the minimum requirements that have been established under Federal law. Congress has expressly reserved such state law authority to the Department and other state commissions. Thus, as a matter of law the FCC may not limit the Department's state authority to impose additional obligations that may go beyond the minimum requirements established by the FCC. In any case, both under Massachusetts law and in accord with 47 U.S.C. § 271, even if the Department ultimately were not to impose additional unbundling obligations upon Verizon, Verizon would still have to provide wholesale access to and permit interconnection with any packetized feeder facilities. Thus, the Department would still have an affirmative obligation under Massachusetts law to ensure that Verizon does not impose any unjust, unreasonable, or discriminatory charges, practices, or regulations on such access or interconnection.

Moving forward with an investigation of Verizon's PARTS offering is necessary to ensure access to and deployment of the PARTS architecture in a manner that spurs market competition. It remains critically important for the Department to step in now to ensure that CLECs have access to packetized voice and data signals. With access to the full functionality of Verizon's packetized loops, CLECs will be able to introduce ELP and take an important step toward the establishment of true facilities-based local competition in Massachusetts.

Indeed, the important issues of operational and economic impairment that the Department will be addressing in Docket DTE 03-60 cannot be fully resolved without addressing the specific network issues that are already teed up in this proceeding. To the extent that the Department wishes to make it feasible for CLECs to contemplate installing their own switches in the future, it may make little sense to force CLECs to look only at the last generation of digital circuit switches and to ignore the promise of greater functionality and consumer choice presented by the new generation of packet switches. But CLECs will not be able to make use of these new technologies unless they are able to reach residential and small business customers by

interconnecting such packet switching technology with Verizon's outside plant as efficiently as Verizon will be able to do for its own retail services.

The comments below make four points. First, there are very strong public policy reasons why it is important for the Department to continue with its investigation of Verizon's PARTS offering, including both the proper pricing of that wholesale service and fundamental network architecture issues that will likely determine whether it could become economically feasible for CLECs to begin to deploy new packet switches in Massachusetts in order to serve residential and small business market customers. Second, the Department's authority under state law to conduct this investigation and make appropriate orders regarding these matters was expressly reserved by Congress, and thus is not preempted by the federal Telecommunications Act. Third, nothing in the FCC's *Triennial Review Order* changes that legal fact, because the FCC has no power to take from the states authority that Congress has expressly reserved or dedicated to them. Fourth, at the very least the Department must proceed with this investigation so that it may determine the just, reasonable, and non-discriminatory rates and other terms and conditions under which CLECs will be able to lease and interconnect with any Verizon-MA feeder facilities that are converted to packet technology.

Argument

I. IN THE LONG RUN, THE VIABILITY OF FACILITIES-BASED COMPETITION AND THE FEASIBILITY FOR CLECS TO DEPLOY PACKET SWITCHING TECHNOLOGY MAY TURN ON THE AVAILABILITY OF ECONOMICALLY VIABLE INTERCONNECTION WITH AND ACCESS TO NEXT GENERATION DIGITAL LOOP TECHNOLOGY.

Making Verizon's PARTS architecture available to CLECs at prices pegged to forward-looking cost should remain a policy goal for the Department in the wake of the FCC's *Triennial Review Order*. While the FCC no longer requires ILECs to unbundle this type of next generation technology as a matter of federal regulatory requirements, the Department should not – and is not required to – curtail its inquiry regarding the unbundling and configuration of such technology in

this docket. Verizon's rollout of its PARTS technology and new network architecture presents the Department with an important opportunity to continue to set the foundation for true local competition for telecommunications services in Massachusetts. *See AT&T's Opposition to Verizon's Appeal* in DTE 98-57-III (November 12, 2002); *AT&T's Initial Comments* in DTE 98-57-III (June 24, 2002). The Department's October 18, 2002 order recognized the importance of moving forward immediately with an investigation of Verizon's PARTS offering. Such an investigation is no less important and no less urgent now.

Verizon's deployment of PARTS has significant implications for CLECs' future ability to access unbundled network elements and interconnect with Verizon's network. *See AT&T's Opposition to Verizon's Appeal* at 4, 5; *AT&T's Initial Comments* at 13-17. These implications go beyond issues merely concerning CLEC access to DSL services at the Remote Terminal ("RT"). How Verizon deploys its PARTS technology will have a critical impact upon the "general use of unbundled loops, the manner in which unbundled loops will be provisioned, and the manner in which CLECs wishing to deploy their own switching and other facilities may interconnect with Verizon's network in order to use unbundled loops." *See AT&T's Initial Comments* at 14.

Significantly, Verizon's PARTS rollout paves the way for electronic loop provisioning, an automated and scalable method of transferring end users' UNE-L service from one local exchange provider to another. ELP is likely to be the best long-term means of permitting the seamless, low-cost transfer of voice and data service among various LECs.

Verizon's PARTS architecture enables the packetizing of voice and data signals between the RT and the central office using Asynchronous Transfer Mode ("ATM") technology. *See attachment to Verizon's Letter dated March 7, 2002*. Once these packetized signals arrive at the central office, they are transferred to an Optical Concentration Device (OCD), at which point

Verizon has offered to hand off data signals to CLECs via an OC-3 or DS-3 interface. *Id.* These packetized data signals will be routed electronically to CLECs through the OCD. *Id.*

Verizon's use of ATM and OCD technology need not be limited to data transmissions. As AT&T has previously advocated, the efficiencies inherent in the electronic transfer and routing of data signals using ATM and OCD technology are also available for packetized voice signals. *See AT&T's Initial Comments* at 14. Verizon's current PARTS offering, however, fails to capitalize on these efficiencies for voice transmissions. Verizon proposes that data transmissions on fiber-fed loops would be carried using modern and efficient packetizing technology, while voice transmission would be carried using parallel analog technology requiring continued costly and inefficient manual hot-cuts at the Main Distribution Frame ("MDF") in the central office. Allowing Verizon to configure the network in this way would assure that local competition for UNE-L voice services continues to be hampered by the cumbersome manual hot-cut process. It would also likely doom any substantial future investment by CLECs in packet switching for Massachusetts markets.

Verizon can, and should be required to, deploy the PARTS architecture to facilitate the packetizing of the entire loop signal, including both voice and data. This would enable the automated transfer of local UNE-L service between providers through the use of ELP, similar to the method of automated transfer currently used between long distance carriers. If both the voice and data signals are handed off to CLECs in packetized form, there would be no need for expensive and error-prone manual hot cuts. Depending upon what proves to be economically viable, ELP might be achieved through interconnection at an OCD located in a Verizon central office, or through shared packetization technology located in remote terminals.

Seizing this opportunity to maximize the capabilities of packetizing technology that Verizon already plans to install in its Massachusetts network would bring a host of benefits to

Massachusetts consumers of local exchange service. *See AT&T's Opposition to Verizon's Appeal* at 13, 14; *AT&T's Initial Comments* at 15. The automated administration of UNE-L transfers through ELP would eliminate the recurring and inevitable inefficiency and inaccuracy of manual hot cuts. ELP would also provide a method of UNE-L transfer that is scalable and would avoid the problems associated with numerous manual transfers being performed on a MDF simultaneously. Because ELP does not require the physical intervention required by hot cuts it avoids the scheduling issues, human error and risks of outages that make the hot cut process so unattractive.

The efficiencies inherent in an automated transfer of local exchange service between carriers would facilitate investment in facilities on the part of CLECs. *See AT&T's Opposition to Verizon's Appeal* at 12; *AT&T's Initial Comments* at 15. In contrast, continuing to rely upon an outmoded system of manual transfers for voice services would retard CLEC investment in switching technology. Should ELP become available, it may make sense for CLECs to begin to deploy their own packet switches to serve Massachusetts customers.

In order to open the door to meaningful facilities-based competition, however, the Department must act now to ensure that Verizon configures its fiber-based network in a fashion that accommodates the packetizing of both data and voice signals. Allowing Verizon to build out its PARTS architecture solely for the packetization of data, only to later reconfigure these loops for the transmission of both voice and data, imposes an unnecessary delay upon CLEC access to packetized voice signals. The reasonable option is to configure the network correctly the first time around to allow for the packetizing and electronic administration of both voice and data signals.

It appears that the incremental cost of adding packetized voice capability to Verizon's PARTS rollout should not be a barrier. To the contrary, AT&T's earlier comments in this docket

cited to SBC public reports representing to its investors that its deployment of PARTS-like technology would pay for itself in cost savings. *See AT&T's Opposition to Verizon's Appeal* at 13; *AT&T's Initial Comments* at 16**.** SBC described its $6 billion investment in NGDLC technology as resulting in "capital and expense savings" of "$1.5 billion annual[ly] by 2004" and that such savings alone would "pay for the entire [NGDLC] initiative on NPV [net present value] basis" – *i.e.*, irrespective of opportunities for increased DSL revenues. SBC Investor Briefing, *SBC Announced Sweeping Broadband Initiative*, at 2 (Oct. 18, 1999).

The Department should continue on the path established by its October 18, 2002 order in this docket and proceed with an examination of CLEC wholesale access to PARTS and ELP. Because the PARTS rollout is still at an early stage, now is the appropriate time for the Department to insure that any new loop architecture making use of packetizing technology is deployed in a manner that maximizes its potential to foster local competition voice and data markets in Massachusetts. It is important for the Department to act now to prevent Verizon from adopting a PARTS architecture that will present future obstacles to competition. In circumstances where Verizon's self-interest does not align with the public interest, the Department should take the steps necessary to ensure that Verizon's conduct does not curtail the choices available to Massachusetts consumers. In order for true local competition to take hold in Massachusetts, Verizon's PARTS technology must be deployed to allow CLEC access at TELRIC rates to both packetized voice and packetized data transmission functionality. By continuing with the investigation that it previously launched in this proceeding, the Department will be able to determine what network architecture and techniques could facilitate future deployment of packet switching technology by CLECs operating in Massachusetts.

II. THE DEPARTMENT'S AUTHORITY TO REGULATE PARTS, AND INTERCONNECTION WITH AND ACCESS TO PACKETIZED VOICE AND DATA SIGNALS, HAS NOT BEEN PREEMPTED BY FEDERAL LAW.

A. Congress Has Expressly Reserved to the Department Broad Authority to Order Unbundling or Interconnection Beyond the Minimum Requirements Established Under Federal Law.

The FCC's decision not to require the unbundling of packetized loop functionalities in its *Triennial Review Order* does not prevent the Department from ordering the unbundling of Verizon's PARTS technology in an effort to promote local competition in Massachusetts. The Department has broad authority under M.G.L. c. 159 to regulate the manner in which Verizon operates and configures its network. *See, e.g.,* D.P.U. 94-50 at 116; D.P.U. 89-20 at 17; *see also* D.T.E. 01-34, *Vote and Order to Open Investigation* at 2-3 (March 14, 2001). The Department has previously found that it has the power to investigate the unbundling of and interconnection with Verizon's network elements under state law. *See* D.P.U. 94-185, *Vote to Open Investigation* at 3-5 (Jan. 6, 1995).

Moreover, Congress specifically reserved power to state commissions to impose additional unbundling requirements of Verizon under the 1996 Telecommunication Act so long as these additional requirements are "not inconsistent" with any federal rules. 47 U.S.C. § 261(c); s*ee also* § 251(d)(3), 252(e)(3). In the words of the Vermont Supreme Court, "the language of the 1996 Act compels the conclusion that Congress did not intend to occupy the field of telecommunications regulation, and that it took explicit steps to maintain the authority of state regulatory bodies to enforce and work within the Act." *In re Petition of Verizon New England*, 173 Vt. 327, 795 A.2d 1196, 1200 (2002). Thus, federal requirements like those imposed by the FCC in the *Triennial Review Order* only set the floor for unbundling and access requirements, and the Department is free to exceed them. *E.g., Goodrow* v. *Lane Bryant, Inc.*, 432 Mass. 165, 170-171 (2000). There is no conflict between state and federal law, and thus no preemption

under the 1996 Act, when it is possible to comply simultaneously with both sets of regulations. *E.g., Arthur D. Little, Inc.* v. *Comm'r of Health and Hospitals of Cambridge*, 395 Mass. 535, 550 (1985).

The Vermont decision quoted above affirmed an order by the Vermont Public Service Board (the "PSB") requiring Verizon to offer CLECs combinations of UNEs on a wholesale basis that were ordinarily combined and to resell voice mail as a telecommunications service. *In re Petition of Verizon New England*, 795 A.2d at 1204, 1207-08. In reaching this conclusion, the Vermont Supreme Court stressed that the PSB's order would be lawful even if "federal law does not require such combinations" of UNEs. *Id.* at 1204. Because nothing in the 1996 Act *prohibited* an ILEC from offering the type of combined UNEs at issue, no conflict between federal and state law could exist. *Id.* Importantly, the Vermont Supreme Court noted that the 1996 Act "does not outline any limitations on state authority to regulate above and beyond the minimum requirements of the Act." *Id.* at 1204. So long as Verizon is capable of complying with state and federal requirements simultaneously, state regulations are valid and not preempted by the 1996 Act. *Id.* at 1204-1205.

The Department continues to enjoy a broad prerogative to order the unbundling of Verizon's PARTS technology in the wake of the FCC's *Triennial Review Order*. Indeed, *Triennial Review* reconfirmed the principle first established by the 1996 Act that state commissions have an important, parallel role to play in determining an ILECs unbundling obligations. The *Triennial Review Order* again recognized that the 1996 Act preserved a state commission's authority to establish "unbundling regulations pursuant to state law as long as the exercise of state authority does not conflict with the Act and its purposes or substantially prevent the Commission's implementation [of the Act.]" *Triennial Review Order* at ¶180. Furthermore, the Commission's order, pursuant to the District of Columbia Circuit Court of Appeals decision

in *U.S. Telecom Ass'n* v. *FCC*, 290 F.3d 415 (2002), delegated important authority concerning the federal unbundling inquiry. Specifically, the order authorizes state commissions to conduct impairment proceedings under federal authority to determine the availability of specific UNEs under federal law in certain circumstances. *See id.* at ¶188. Thus, this FCC order does not, and indeed cannot (as explored further below), change the parallel regulatory framework established by Congress in the 1996 Act.

B. The FCC Cannot Bar the Department From Exercising Authority Expressly Reserved to the States by Congress.

The Department has sought comments "on whether the Department's review of Verizon's PARTS offering is preempted by, or is otherwise inconsistent with, the Triennial Review Order and promulgated regulations." *See* Hearing Officer's Procedural Memorandum, dated September 2, 2003. The short answer to this question is an unambiguous "no."

In the *Triennial Review Order*, the FCC delegated to state commissions the power to exercise the FCC's federal regulatory authority, and in so doing attempted to define the scope of the state commission's power to act pursuant to that delegated federal authority. *See id.* at ¶186 ("any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations we set forth herein.")

The FCC cannot go further, and preempt the exercise of independent regulatory authority under state law, except where Congress has given it the power to do so. "[A]n agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it." *City of New York* v. *FCC*, 486 U.S. 57, 66, 108 S.Ct. 1637, 1643 (1988), quoting *Louisiana Public Service Commission* v. *FCC*, 476 U.S. 355, 374, 106 S.Ct. 1890, 1901 (1986).

The *Triennial Review Order* could not and did not do anything to change the statutory framework established by Congress to govern a state commission's authority to act pursuant to

state law. The FCC's observation that state unbundling authority must be exercised in a manner that is consistent with federal requirements under the Act and that does not "substantially prevent" the FCC's implementation of the Act merely repeats the statutory language that has governed the federal/state regulatory relationship since the passage of the 1996 Act. *Compare TRO* at ¶ 193 *with* 47 U.S.C. § 251(d)(3). Courts have consistently interpreted this type of statutory language to mean that a state commission's authority under state law is only preempted in the situation where compliance with state requirements would prevent a party from complying with affirmative requirements established under federal law. *See, e.g., Petition of Verizon New England, ,* 795 A.2d at 1207-08; *see also Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142-43 (1963). In this case, a DTE decision requiring the unbundling of Verizon's PARTS technology would not prevent Verizon from complying with any affirmative duties established by the FCC's *Triennial Review Order*.

Even if the FCC had attempted to circumscribe state unbundling authority through its promulgation of the *Triennial Review Order*, such an attempt would be of no force or effect. Because Congress has specifically reserved authority to the states under the 1996 Act to implement regulations and policies consistent with the purposes of the Act, the FCC lacks authority to limit that congressional grant of authority to the states.

In *Louisiana Public Service Commission* v. *FCC,* the U.S. Supreme Court struck down an FCC order purporting to preempt state regulation of depreciation rates and methods for classes of property used by telephone companies. *See* 476 U.S. 355, 374, 106 S.Ct. 1890, 1901. The Court read the plain language of 47 U.S.C. § 151 in conjunction with the jurisdictional limits in § 152(b) to conclude that the FCC did not have the authority to preempt state regulation of these matters. *Id.* at 360. The Court recognized that Congress created the FCC to consolidate the regulatory responsibility for interstate communications, but found it equally clear that § 152(b)

demonstrated Congress' intent to reserve intrastate regulation of "charges, classifications, practices, services, [and] facilities" to the states. *Id*. at 354, 370. Given that Congress had reserved this authority to the states, the Court held that the FCC had no authority to prescribe depreciation practices and charges for intrastate ratemaking. *Id*. at 373.

Although the 1996 Act established FCC authority to place certain federal unbundling requirements upon ILECs, it explicitly reserved parallel unbundling authority with the states. The FCC cannot attempt to eviscerate this parallel regulatory scheme as it would directly contravene the intent of Congress. *See Louisiana Public Service Comm'n*, 476 U.S. at 374, 106 S.Ct. at 1901. "[T]he language of the 1996 Act compels the conclusion that Congress did not intend to occupy the field of telecommunications regulation, and that it took explicit steps to maintain the authority of state regulatory bodies to enforce and work within the Act." *Petition of Verizon New England, Inc.*, 795 A.2d at 1200.

As noted above, in 47 U.S.C. § 251(d)(3) and § 261(c), states are given express authority to impose additional requirements upon ILECs to further competition so long as those requirements are not inconsistent with federal rules. *See* 47 U.S.C. §§ 251(d)(3), 261(c). In addition, § 252(e)(3) evidences Congress' intent to reserve to states the authority to promulgate and enforce regulations that establish access and interconnection obligations of LECs provided those obligations are not inconsistent with federal regulations. Through these provisions, Congress has "expressly … authorized states to implement additional requirements that would foster local interconnection and competition." *Michigan Bell Telephone Co. v. MCIMetro Access Transmission Services, Inc.*, 323 F.3d 348, 358 (6th Cir. 2003). Thus, a state commission "can enforce state law regulations, even where those regulations differ from the terms of the Act or an interconnection agreement, as long as the regulations do not interfere with the ability of new entrants to obtain services." *Id.*, 323 F.3d at 359.

This express reservation of authority to states necessarily excludes FCC's authority to prohibit state action under the Act absent inconsistency with federal regulations. "To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be a grant to the agency power to override Congress." *Louisiana Public Service Commission*, 476 U.S. at 374-375, 106 S.Ct. at 1902. Thus, the FCC cannot promulgate regulations or issue orders producing this effect and the Department is free to impose unbundling, interconnection, or other obligations upon Verizon that go beyond federal requirements.

The authority cited by the FCC in the *Triennial Review Order* regarding preemption is plainly inapplicable here. *See Triennial Review Order* at ¶192, fn 612. In *City of New York*, cable television franchisers challenged regulations adopted by the FCC that explicitly prohibited and preempted local regulation of technical signal quality standards. The Court held that the FCC had authority to preempt state law in this area because local regulation would frustrate the purposes of the Cable Act of 1984 by placing a burden on both cable system operators and consumers. 486 U.S. at 66-69, 108 S.Ct. at 1643-1645. Critical to the Court's decision was the fact that Congress enacted the Cable Act "against a background of federal preemption on this particular issue," basically as codification of a ten year *de facto* policy of preemption. *Id*. at 66, 1643. In contrast, a Department decision requiring the unbundling of or governing interconnection with PARTS would be consistent with the main purpose of the 1996 Act – the promotion of local competition in telecommunications services.

Additionally, instead of releasing the 1996 Act against a historical background of federal preemption, the 1996 Act was enacted against a historical background of state control over local facilities. The federal telecommunications statutes reflect "a national goal of the creation of a rapid and efficient phone service," and "enact a dual regulatory system to achieve that goal" under which the states retain regulatory authority over intrastate facilities and communications.

Louisiana Public Service Comm'n, 476 U.S. at 370, 106 S.Ct. at 1899. This "dual regulatory system" is defined in part by 47 U.S.C. § 152(b), which "fences off" intrastate facilities and services from FCC regulation. *Id.* The 1996 Act's insertion of FCC jurisdiction into specific areas of local competition did not invalidate the general reservation of intrastate jurisdiction to states as codified in § 152(b), but rather carved out exceptions for FCC regulation. *See New England Public Communications Council, Inc.* v. *FCC*, 334 F.3d 69, 75 (D.C.Cir. 2003) (analyzing FCC authority under 47 U.S.C. § 276, the court stated that the preemption inquiry "[i]n cases involving the Communications Act. . .is guided by the language of section 152(b), which the Supreme Court has interpreted as 'not only a substantive jurisdictional limitation on the FCC's power, but also a rule of statutory construction' so that a provision granting FCC jurisdiction must be 'so unambiguous or straightforward as to override the command of § 152(b).'"(citations omitted)).

In sum, though the FCC may be able to place limits on its delegation of ***federal*** regulatory authority to state commissions, it has no power to overide the statutory decision by Congress to permit states to continue to exercise the power they have always had to impose unbundling, interconnection, or other regulatory requirements in addition to those established by the FCC.

C. At the Very Least the Department Will Have to Establish Just, Reasonable, and Nondiscriminatory Terms and Conditions for CLECs to Lease and Interconnect With Any Feeder Facilities Converted to Packet Technology.

Even without a Department order to offer unbundled access to packetized fiber feeder at TELRIC rates, Verizon would still have to offer CLECs such access at rates and on other terms that are just, reasonable, and non-discriminatory. Thus, separate and apart from the Department's authority to impose additional unbundling or interconnection requirements as a matter of Massachusetts law and policy, the Department has an independent obligation – under

Massachusetts law – to ensure that any packetized feeder plant installed by Verizon be made available to CLECs on a wholesale basis on fair terms that permit CLECs to compete on an equal footing with Verizon's retail operations.

Under the *Triennial Review Order*, Verizon must continue to "offer unbundled access to stand-alone copper loops and subloops for the provision of narrowband and broadband services," and must also "offer unbundled access to the Time Division Multiplexing (TDM) features, functions, and capabilities of [its] hybrid copper/fiber loops." *TRO* ¶ 7. Where Verizon is required to offer unbundled access under 47 U.S.C. § 251 it must do so at TELRIC rates.

Even under the FCC's application of federal law, however, Verizon must continue to provide wholesale access to loops or portions of loops that the FCC has not ordered to be unbundled at TELRIC rates. "[T]he requirements of [47 U.S.C.] section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling regardless of any unbundling analysis under section 251." *TRO* ¶ 653. Under federal law, such "network elements required only under section 271," but not under section 251, must be "priced on a just, reasonable and not unreasonably discriminatory basis." *TRO* ¶ 656.

This is similar to Verizon's independent obligation under Massachusetts law to make its facilities, and interconnection with its facilities, available on terms and conditions that are just, reasonable, and non-discriminatory. *See, e.g.,* G.L. c. 159, §§ 14, 17; Docket D.T.E. 01-31-Phase I, at 18; Docket D.P.U. 90-206-B/91-66-B at 11-12 (1993). Under Massachusetts law, neither Verizon's "rates, fares, or charges" nor any of its other "regulations or practices" may be "unjust, unreasonable, unjustly discriminatory, [or] unduly preferential." G.L. c. 159, § 14.

These statutory requirements have important implications for Verizon's PARTS proposal, and its plans to convert increasing portions of its fiber feeder facilities from TDM technology to

next generation packetized technology. As explained above, the Department retains full authority under Massachusetts law to order Verizon to unbundle hybrid fiber/copper loops employing packet technology at TELRIC rates. Even if it were not to do so, however, Verizon would have to unbundle the copper distribution portion of such loops at TELRIC rates, unbundle the packet fiber portion of such loops at just, reasonable, and nondiscriminatory rates (which may end up being very close to TELRIC rates), and to offer the entire loop priced in such a manner to CLECs without imposing any regulations or instituting any practices that discriminate against CLEC usage of such loops and in favor of Verizon usage.

In sum, the Department has an obligation to proceed with this investigation in order to to ensure that Verizon's PARTS proposal and new loop architecture are offered to CLECs on terms that comply fully with Massachusetts law.

Conclusion.

For the reasons stated above, the Department should push forward with its investigation of Verizon's PARTS offering. The FCC's *Triennial Review Order* does not prevent state commissions from adopting unbundling requirements in excess of those minimum requirements established under Federal law. Even if the FCC has attempted to limit state authority in its promulgation of the *Triennial Review Order*, its order does not have that effect because the FCC lacks authority to do so. Moving forward with an examination of PARTS now is particularly critical given the unique window of opportunity created by Verizon's PARTS deployment and the significant impact the Department's action can have upon the future of local telecommunications competition in Massachusetts. AT&T respectfully urges the Department to restart a schedule for discovery, prefiled testimony, hearings, and briefs to examine CLEC access to and Verizon's configuration of its PARTS technology.

Respectfully submitted,

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